Supreme Court, U.S.
FILED
FEB 3 1992
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No. 91-1115

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

VILLY DIERNISSE - PETITIONER

VS.

BUSINESS COMMUNICATIONS COMPANY, INC.

and LOUIS NATURMAN - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE U. S. CT. OF APP. (2d CIR.)

**OPPOSITION TO PETITION**

**FOR WRIT OF CERTIORARI**

**APPENDIX I**

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

VILLY DIERNISSE :

VS. : CIVIL NO. B-84-44 EBB

BUSINESS COMMUNICATIONS, INC. ET AL :

MEDIATION PANEL ORDER

WHEREAS, the parties have agreed to attempt to resolve their differences by mediation:

Now, therefore, with the consent of all parties, it is hereby ORDERED:

A. THE MEDIATION PANEL

APPOINTMENT

1. The Attorney J. Reid Murphy, 450 Main Street, Hartford, Connecticut 06103; Attorney Edwin Komen, Suite 201, 80 Pennsylvania Avenue S.E., Washington, D. C. 20003; and Professor Lewis Kurlantzick, University of Connecticut School of Law, 55 Elizabeth Street, Hartford, Connecticut 06105, are appointed as the Mediation Panel.

J. Reid Murphy shall serve as Chairperson.

POWERS AND AUTHORITY

2. That the Mediation Panel shall consider and submit to the parties fair and just settlement terms with respect to the issues among all the parties in the above-entitled cases.

TIMETABLE

3. That on or before April 3, 1991, each party shall exchange with all other parties, and submit to each member of the Mediation Panel, a mediation brief not to exceed 15 pages; outlining the issues to be resolved, disclosing the party's factual and legal positions concerning each issue, and identifying and attaching, where practicable, each exhibit to be introduced by the party at the mediation hearings. Do not file mediation briefs in the clerk's office.

4. That on or before April 17, 1991, each party may submit a reply brief.

5. That on April 15, 1991, at ten o'clock in the morning, counsel shall meet with the undersigned judicial officer to discuss procedures and the presentation of evidence at the hearing. At that meeting, all proposed exhibits will be marked and any rulings on admissibility will be made by this judicial officer.

DESCRIPTION OF HEARING

6. Counsel should be prepared to summarize and comment on the evidence and law of the case.

No testimony is to be taken from witnesses, however, counsel may restate the sworn testimony of anticipated trial witnesses.

In making their statements, counsel are limited as to the evidence that would be

admissible at trial. Counsel are permitted to mingle representations of fact with legal argument, considerations of responsibility and restraint must be observed. Counsel may only present factual representations supported by references to discovery material, including but not limited to depositions, stipulations, admissions, answers to interrogatories, signed sworn statements of witnesses or other documents.

Statements, reports and depositions may be read from, but not at undue length.

Physical evidence, including documents and pictures may be exhibited during counsel's presentation and submitted to the panel for consideration during deliberation, provided they have been approved as admissible by this presiding judicial officer. Such exhibits should be marked and will be returned to the respective parties

at the conclusion of the panel's deliberation.

7. That at the hearings, the formal rules of evidence will not control, but under the supervision of Attorney Murphy, all pertinent evidence supporting the parties' positions will be admitted to insure complete and fair presentations by the parties; no court reporter or recording equipment will be allowed; the Mediation Panel may address questions to counsel and the parties; counsel, through the Mediation Panel, may address pertinent questions.

8. That hearings before the Mediation Panel shall be conducted on April 29 and April 30, 1991:

A. The plaintiff shall present all its case-in-chief evidence on April 29, 1991;

B. The defendant shall present all

their case-in-chief evidence on April 30, 1991;

9. That Mediation hearings shall commence at 10:00 A.M. and conclude at 4:30 P.M. each day.

POST-HEARING PROCEDURES

10. That immediately following the hearings, the Mediation Panel will meet privately to attempt to reach fair, reasonable and just settlement proposals with respect to the issues submitted for deliberation.

BINDING MEDIATION

11. That the parties by unanimous agreement, having decided to accept the settlement decision of the Mediation Panel as binding, the following rules will govern:

A. That if the Mediation Panel fails to achieve unanimity: The case will be reported as "not settled" and revert to

premediation status quo: the evidence presented at the hearings will be deemed confidential; and no panel member may be called as a witness in future proceedings among the parties;

B. That on the other hand, if the Mediation Panel renders unanimous determinations: Its findings and conclusions shall be binding on the parties with no right of appeal therefrom; the parties shall file all necessary moving papers to dismiss the litigation with prejudice; and the determinations shall have the full force and effect of a judgment at law and be "So Ordered" by the Court.

12. Each party will pay for the Mediation Panel member that they have selected directly. The Chairperson will be compensated rate of $100 per hour; the payment of which is to be shared equally

between the two parties regardless of the results of the mediation proceeding.

SO ORDERED:

Dated at Hartford, Connecticut, this 13th day of January 1991.

/s/

F. Owen Eagan
United States Magistrate Judge